

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

MISSISSIPPI STATE CONFERENCE OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE; DR.
ANDREA WESLEY; DR. JOSEPH WESLEY;
ROBERT EVANS; GARY FREDERICKS; PAMELA
HAMNER; BARBARA FINN; OTHO BARNES;
SHIRLINDA ROBERTSON; SANDRA SMITH;
DEBORAH HULITT; RODESTA TUMBLIN; DR.
KIA JONES; ANGELA GRAYSON; MARCELEAN
ARRINGTON; VICTORIA ROBERTSON,

Plaintiffs,

vs.

STATE BOARD OF ELECTION COMMISSIONERS;
TATE REEVES, *in his official capacity as Governor of
Mississippi*; LYNN FITCH, *in her official capacity as
Attorney General of Mississippi*; MICHAEL WATSON,
*in his official capacity as Secretary of State of
Mississippi*,

Defendants,

AND

MISSISSIPPI REPUBLICAN EXECUTIVE
COMMITTEE,

Intervenor-Defendant.

**CIVIL ACTION NO.
3:22-cv-734-DPJ-HSO-LHS**

ORAL ARGUMENT REQUESTED

**PLAINTIFFS' MOTION TO COMPEL
SUBPOENA RECIPIENTS' PRODUCTION OF PRIVILEGE LOG**

Plaintiffs the Mississippi State Conference of the National Association for the Advancement of Colored People, Dr. Andrea Wesley, Dr. Joseph Wesley, Robert Evans, Gary Fredericks, Pamela Hamner, Barbara Finn, Otho Barnes, Shirlinda Robertson, Sandra Smith,

Deborah Hulitt, Rodesta Tumblin, Dr. Kia Jones, Angela Grayson, Marcelean Arrington, and Victoria Robertson (collectively, “Plaintiffs”) respectfully move this Court for an order compelling the Mississippi Standing Joint Legislative Committee on Reapportionment and Redistricting (“MS SJLCRR”), Ben Collins, Representative Dan Eubanks, Senator Dean Kirby, Representative Charles “Jim” Beckett (fmr.), James F. Booth, Representative Philip Gunn, Neal Smith, Nathan Upchurch, and Lieutenant Governor Delbert Hosemann (collectively, “Subpoena Recipients”) to produce a privilege log pursuant to Federal Rule of Civil Procedure (“Rule”) 45(e)(2) or, in the alternative, for an order compelling the Subpoena Recipients to submit their purportedly privileged documents for review in camera or for review by a special master.

1. Plaintiffs served the Subpoena Recipients with a subpoena to produce documents on June 27, 2023 (for the MS SJLCRR, Mr. Collins, Rep. Eubanks, Sen. Kirby, Rep. Beckett (fmr.), and Mr. Booth), and July 6, 2023 (for Rep. Gunn, Mr. Smith, Mr. Upchurch, and Lt. Gov. Hosemann). *See* ECF Nos. 52–55.

2. The Subpoena Recipients served their written objections and responses to the subpoenas on July 27, 2023 (for the MS SJLCRR, Mr. Collins, Rep. Eubanks, Sen. Kirby, Rep. Beckett (fmr.), and Mr. Booth), August 7, 2023 (for Rep. Gunn and Mr. Smith), and August 28, 2023 (for Mr. Upchurch and Lt. Gov. Hosemann), asserting objections on the basis of legislative privilege and attorney-client privilege, but not providing a privilege log. *See* Exhibit A.

3. Plaintiffs explained in two separate conferral emails that the Subpoena Recipients were required to produce a privilege log, but the Subpoena Recipients continued to object. *See* Exhibits B and C.

4. Pursuant to the Case Management Order, on September 15, 2023, the Parties attended a telephonic conference with the Court to attempt to resolve the issue but were unable to do so. *See* ECF No. 35. The Court granted Plaintiffs permission to file this Motion.

5. A privilege log is necessary for Plaintiffs to evaluate the merits of the assertion of legislative privilege as to each withheld document. Because the document requests facially extend beyond documents that are protected by the legislative privilege, Plaintiffs can only determine if documents are subject to the legislative privilege with the aid of a privilege log pursuant to Rule 45(e)(2).

6. Plaintiffs hereby incorporate in further support of this Motion their accompanying Memorandum of Law and the following exhibits:

Exhibit A – Subpoena Recipients’ Objections and Responses to Subpoenas;

Exhibit B – Conferral Emails Between J. Esterkin and P. R. Beckett;

Exhibit C – P. R. Beckett Letter Response to J. Esterkin Conferral Email; and

Exhibit D – Good Faith Certificate pursuant to Miss. Unif. Civ. L. R. 37(a).

WHEREFORE, Plaintiffs respectfully request that the Court grant this Motion and order the Subpoena Recipients immediately to produce a privilege log pursuant to Rule 45(e)(2) or, in the alternative, order the Subpoena Recipients to submit their purportedly privileged documents for review in camera or for review by a special master.

This the 22 day of September, 2023.

/s/ Joshua Tom

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CERTIFICATE OF SERVICE

I, Joshua Tom, do certify that on this day I caused to be served a true and correct copy of the foregoing by electronic mail to all counsel of record.

This the 22 day of September, 2023.

/s/ Joshua Tom
Joshua Tom